

In the High Court of Punjab and Haryana at Chandigarh

RSA-4051 of 2019 (O&M)
Date of Decision:17.12.2019

Kamla Devi

---Appellant

vs.

Pushpa Devi Sharma and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Bhavyadeep Walia, Advocate
for the appellant

Rekha Mittal, J.

Challenge in the present appeal has been directed against judgment and decree dated 28.5.2019 passed by the Additional District Judge, Patiala whereby appeal against judgment and decree dated 15.12.2015 passed by the trial court was allowed, impugned judgment and decree was reversed and suit filed by the respondents-plaintiffs was decreed to the following effect:-

“Keeping in view the peculiar circumstances and the fact that defendant No. 1 Narati Devi has already died. It would be better if the plaintiff/appellants would give a notice in writing to respondent No. 2 within a period of two months from the decision of this appeal showing her interest in purchase of the property to respondent No. 2 by tendering the sale

consideration mentioned in sale deed dated 1.9.2009 and in the event of doing so by the plaintiffs/appellants, the sale deed dated 1.9.2009 would be deemed to be set aside and respondent No. 2 would hand over the title deed to the plaintiffs/appellants and would execute the sale deed of the share purchased by her from Narati Devi vide sale deed No. 6935 dated 1.9.2009 and execute the sale deed in favour of plaintiffs/appellants, failing which the plaintiffs-appellants would be liable to get her right enforced through process of law and if the plaintiffs failed to do the needful as stated above, appeal will be deemed to have been dismissed”.

The respondents-plaintiffs staked their claim for declaration to the effect that sale deed dated 1.9.2009 executed by Narati Devi-defendant No. 1 in favour of defendant No. 2, is illegal and void. It is averred that Jagdish Ram Sharma husband of plaintiff No. 1 and father of plaintiffs No. 2 and 3 was owner of property measuring 2½ marlas out of khasra No. 66//6/7 (0-10) situated at Sidhu Colony, Jhill, Patiala. Plaintiffs are residing in suit property and there is an electric connection. Jagdish Ram Sharma along with his son Shavinder Kumar expired in an accident on 14.6.2007. After death of Jagdish Ram Sharma, plaintiffs and defendant No. 1 became owners to the extent of 1/4th share each. Vasudev son of Mohan Lal fraudulently got impugned sale deed executed from defendant No. 1 in favour of defendant No. 2 with regard to her (defendant No. 1) 1/4th share. The plaintiffs being legal heirs of Jagdish Ram Sharma have preferential right to purchase share of defendant No. 1.

The sole submission made by counsel for the appellant is that since Kamla Devi is the daughter-in-law of defendant No. 1 (since deceased) and not a stranger to family of respondents-plaintiffs and Narati Devi defendant No. 1 could even transfer her share in the suit property either by way of gift or testamentary succession, provisions of Section 22 of the Hindu Succession Act, 1956 (in short “the Act”) should not be allowed to attract and as such decree passed by the Appellate Court may be set aside.

I have heard counsel for the appellant and perused the paper book particularly the judgments passed by the courts.

Indisputably, the suit property was inherited by class-I heirs of Jagdish Ram Sharma as Jagdish Ram Sharma died on 14.6.2007. Narati Devi defendant No. 1 being mother of deceased Jagdish Ram Sharma became entitle to 1/4th share in the suit property as remaining 3/4th share to the extent of 1/4th share each was inherited by the plaintiffs being the widow and daughters of Jagdish Ram Sharma. The suit property is a house situated in Sidhu Colony, Jhill, Patiala and its area is 2½ marlas.

Section 22 of the Act deals with preferential right to acquire property in certain cases. A relevant extract therefrom reads as follows:-

22. Preferential right to acquire property in certain cases.—

(1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

Perusal of Sub Section (1) of Section 22 of the Act makes it evident that where an interest in any immovable property of an intestate devolves upon two or more heirs specified in class I of the Schedule and any one of such heirs proposes to transfer his or her interest in the property, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

Counsel tried to create a hypothetical situation that Narati Devi could transfer her share in the suit property in favour of the appellant on the basis of testamentary succession, therefore, she is entitled to save her right in the suit property on the basis of sale deed as well. The contention raised by counsel being the result of hypothetical situation need not be addressed by the court. He cannot seek any aid by raising such a contention when examined in the light of provisions of Section 22 of the Act. In this view of the matter, I do not find an error much less illegality in the impugned judgment that would call for intervention.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

17.12.2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No